



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

**[SATS No. MS-023-FOR; Docket No. OSM-2012-0018;
S1D1SSS08011000SX066A00067F134S180110;
S2D2SSS08011000SX066A00033F13XS501520]**

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Mississippi regulatory program (Mississippi Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Mississippi proposed revisions to its regulations regarding: definitions; identification of interests; lands eligible for remining; permit eligibility determination;

review of permit applications; eligibility for provisionally issued permits; criteria for permit approval or denial; initial review and finding requirements for improvidently issued permits; notice requirements for improvidently issued permits; suspension or rescission requirements for improvidently issued permits; unanticipated events or conditions at remining sites; verification of ownership or control application information; who may challenge ownership or control listings and findings; how to challenge an ownership or control listing or finding; burden of proof for ownership or control challenges; written agency decision on challenges to ownership or control listings or findings; post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information; post-permit issuance requirements for permittees; backfilling and grading: previously mined areas; and alternative enforcement. Mississippi intends to revise its program to be no less effective than corresponding Federal regulations, to clarify ambiguities, and to improve operational efficiency.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

- I. Background on the Mississippi Program
- II. Submission of the Amendment
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I. Background on the Mississippi Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "... a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Mississippi program effective September 4, 1980. You can find background information on the Mississippi program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Mississippi program in the September 4, 1980, Federal Register (45 FR 58520). You can also find later actions

concerning the Mississippi program and program amendments at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Submission of the Amendment

By e-mail dated July 26, 2012 (Administrative Record No. MS-0423), the Mississippi Department of Environmental Quality (Mississippi or the Department) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). Mississippi submitted the proposed amendment in response to a September 30, 2009, letter (Administrative Record No. MS-0420-02) that OSM sent to Mississippi in accordance with 30 CFR 732.17(c), concerning multiple changes to ownership and control requirements. Mississippi also made additional changes to its regulations on its own initiative. The specific sections in the Mississippi program are discussed in **Part III OSM's Findings**. Mississippi intends to revise its program to be no less effective than the Federal regulations, to clarify ambiguities, and to improve operational efficiency. We announced receipt of the proposed amendment in the September 19, 2012, Federal Register (23 FR 58056). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because none were requested one. The public comment period ended on October 19, 2012. We did not receive any public comments.

By e-mail dated March 4, 2013 (Administrative Record No. MS-0423-03), Mississippi

requested that we suspend processing of their proposed amendment while they made some administrative corrections to their submission. Mississippi submitted their administratively revised proposed rule by e-mail dated June 28, 2013 (Administrative Record No. MS-0423-04). We did not reopen the comment period for the additional changes because they were entirely administrative in nature and did not substantively affect the Mississippi Program.

III. OSM's Findings

We are approving the amendment as described below. The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are also approving the administrative changes made by Mississippi throughout their proposed rule, which primarily consisted of changing the word “chapter” to “rule” and “subpart” to “chapter.” Statutory references were added at the end of each chapter and rule. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at www.regulations.gov.

A. Mississippi Surface Coal Mining Regulations §105. Definitions

Mississippi proposed to add new definitions for “Previously Mined Area” and “Violation”; and revised the definitions for “Applicant Violator System or AVS”;

“Knowing or Knowingly”; “Slope”; and “Willfully.” Mississippi’s new definitions and revised definitions are substantively the same as counterpart Federal regulations at 30 CFR 701.5. Mississippi also corrected a reference to a regulatory citation within its definition of “Ownership or Control Link,” which has no Federal counterpart. Revision of this previously approved definition does not make Mississippi’s program less effective than the Federal regulation. Therefore, we approve Mississippi’s new and revised definitions.

B. Mississippi Surface Coal Mining Regulations §2305. Identification of Interests

Mississippi proposed to add additional language clarifying the requirements for information to be included in a permit application concerning the identification of interests for the applicant and operator and for the entry of the applicant’s information into the Applicant Violator System (AVS). We find that Mississippi’s new language is substantively the same as counterpart Federal regulations at 30 CFR 778.8, 778.9, and 778.11. Therefore, we approve Mississippi’s revisions.

C. Mississippi Surface Coal Mining Regulations §2902. Lands Eligible for Remining

Mississippi proposed to add new §2902 regarding lands eligible for remining. The regulation requires that any person who submits a permit application to

conduct a surface coal mining operation on lands eligible for remining must comply with all the requirements of the regulations; including the permitting requirements of §3130, which concerns unanticipated events or conditions at remining sites. We find that Mississippi's new regulation is substantively the same as the counterpart Federal regulation at 30 CFR 785.25. Therefore, we approve Mississippi's new regulation.

- D. Mississippi Surface Coal Mining Regulations §3102. Permit Eligibility Determination; §3112. Review of Permit Applications; §3113. Eligibility for Provisionally Issued Permits; and §3115. Criteria for Permit Approval or Denial

Mississippi proposed to add new §3102 which explains the roles and responsibilities of the Department and the Permit Board on whether the applicant is eligible to receive a permit. We find that Mississippi's new regulation is substantively the same as the counterpart Federal regulation at 30 CFR 773.12. Therefore, we are approving Mississippi's new regulation.

Mississippi proposed renumbering §3113 Review of Permit Applications, to §3112 Review of Permit Applications. This change allows Mississippi's regulations to remain in compliance with other portions of its regulations. We find that these revisions make Mississippi's regulations no less effective than the Federal regulations. Therefore, we approve Mississippi's revision.

Mississippi proposed to add new §3113 regarding the applicant's eligibility for a provisionally issued permit. This applies to any applicant that applies for a permit or who owns or controls a surface coal mining and reclamation operation with outstanding permit violations. We find that Mississippi's new regulation is substantively the same as the counterpart Federal regulation at 30 CFR 773.14. Therefore, we approve Mississippi's new regulation.

Mississippi proposed to revise its citations in §3115(m) to require compliance with new §3102(d) regarding update of compliance information prior to permit issuance. Mississippi added new paragraphs (n) and (o) to clarify the requirements regarding permit approval criteria for proposed remining operations. We find that Mississippi's revised citations and new paragraphs (n) and (o) are substantively the same as counterpart Federal regulations at 30 CFR 773.15(k)(1) and (m)(i), (ii), and (iii). Therefore, we approve Mississippi's revisions.

- E. Mississippi Surface Coal Mining Regulations. §3127. Initial Review and Finding Requirements for Improvidently Issued Permits; §3128. Notice Requirements for Improvidently Issued Permits; and §3129. Suspension or Rescission Requirements for Improvidently Issued Permits

Mississippi proposed to delete old language in §3127 regarding general

procedures for improvidently issued permits. Mississippi replaced its old language with new language regarding what the Permit Board must do when it has reason to believe that a permit has been improvidently issued. The revision describes the written permit findings the Permit Board must make regarding improvidently issued permits and how a permittee can challenge those findings. We find that Mississippi's newly added language is substantively the same as the counterpart Federal regulation at 30 CFR 773.21. Therefore, we approve Mississippi's revisions.

Mississippi proposed to add new §3128 regarding the responsibilities of the Department in serving the notice of suspension or rescission of improvidently issued permits. We find that Mississippi's new regulation is substantively the same as the counterpart Federal regulation at 30 CFR 773.22. Therefore, we approve Mississippi's new regulation.

Mississippi proposed to delete old language in §3129 regarding revocation or suspension procedures for improvidently issued permits. Mississippi replaced this old language with new language regarding the Permit Board's responsibilities for: (1) suspension or rescission of improvidently issued permits; (2) evaluation of permittee evidence; (3) administrative review of the findings; and (4) terms of the notice of cessation of operations. We find that Mississippi's revisions are substantively the same as counterpart Federal regulations at 30 CFR 773.21 and

773.23. Therefore, we approve Mississippi's revisions.

F. Mississippi Surface Coal Mining Regulations §3130. Unanticipated Events or Conditions at Remining Sites

Mississippi proposed to add new §3130 regarding an applicant's eligibility for a permit if he has on record an unabated violation resulting from unanticipated events or conditions at an existing or past permit on lands eligible for remining. We find that Mississippi's new regulation is substantively the same as the counterpart Federal regulation at 30 CFR 773.13. Therefore, we approve Mississippi's new regulation.

G. Mississippi Surface Coal Mining Regulations §3131. Verification of Ownership or Control Application Information

Mississippi proposed revisions to §3131 regarding what Mississippi must do when it receives an application and it appears that neither the applicant nor the operator has any mining experience. Specifically, it requires the Department to investigate to determine whether there may be additional owners or controllers. If additional owners or controllers are identified, Mississippi requires such persons to disclose their identity and make certifications, and requires their identification information be entered into AVS. We find that these revisions

allow Mississippi to fully meet the Federal requirements of 30 CFR 773.10 and 773.11 regarding review of permit history and review of compliance history, thereby making Mississippi's regulation no less effective than the Federal regulations. Therefore, we approve Mississippi's revisions.

- H. Mississippi Surface Coal Mining Regulations §3133. Who May Challenge Ownership or Control Listings and Findings; §3135. How to Challenge an Ownership or Control Listing or Finding; §3136. Burden of Proof for Ownership or Control Challenges; and §3137. Written Agency Decision on Challenges to Ownership or Control Listings or Findings

Mississippi proposed to delete old language in §3133 regarding the review of ownership or control and violation information and add new language regarding who may challenge an ownership or control listing or finding. We find that the new language is substantively the same as the counterpart Federal regulation at 30 CFR 773.25. Therefore, we approve Mississippi's revisions.

Mississippi proposed to delete old language in §3135 regarding procedures for challenging ownership or control listings or findings, and replaced it with new language regarding how to challenge an ownership or control listing or finding. It explains that to challenge an ownership or control listing or finding, the person making the challenge must submit a written explanation of the basis for the

challenge, along with evidence or explanatory material that a person wishes to provide. We find that this new language is substantively the same as the counterpart Federal regulation at 30 CFR 773.26. Therefore, we approve Mississippi's revisions.

Mississippi proposed to delete old language in §3136 regarding written agency decisions on challenges to ownership or control listings or findings and replaced it with new language regarding the burden of proof for ownership or control challenges. This applies to anyone who challenges a listing of ownership or control, or a finding of ownership or control made under §3138(g). It requires anyone who challenges an ownership or control listing or finding to prove by a preponderance of evidence that they either do not or did not own or control the relevant portion of a surface coal mining operation. We find that Mississippi's new language is substantively the same as the counterpart Federal regulation at 30 CFR 773.27. Therefore, we approve Mississippi's revisions.

Mississippi proposed to delete old language in §3137 regarding standards for challenging ownership or control links and the status of violations, and replaced it with new language regarding written agency decisions on challenges to ownership or control listings or findings. Mississippi explains that the Permit Board will promptly provide the person making the challenge with a copy of its decision by any means consistent with the rules governing services of summons and

complaints under Rule 4 of the Mississippi Rule of Civil Procedures. We find that this new language is substantively the same as the counterpart Federal regulation at 30 CFR 773.28. Therefore, we approve Mississippi's revisions.

I. Mississippi Surface Coal Mining Regulations §3138. Post-Permit Issuance Requirements for Regulatory Authorities and Other Actions Based on Ownership, Control, and Violation Information

Mississippi proposed to add new §3138 regarding the Department's responsibilities after permit issuance related to ownership, control, and violation information. It also allows the permittee to request a preliminary hearing related to such actions. We find that Mississippi's new section is substantively the same as the counterpart Federal regulation at 30 CFR 774.11. Therefore, we approve Mississippi's new regulation.

J. Mississippi Surface Coal Mining Regulations §3139. Post-Permit Issuance Requirements for Permittees

Mississippi proposed to add new §3139 regarding the responsibilities of permittees for providing information following a cessation order after a permit has been issued. We find that Mississippi's new section is substantively the same as the counterpart Federal regulation at 30 CFR 774.12. Therefore, we are

approving Mississippi's new regulation.

K. Mississippi Surface Coal Mining Regulations §5396. Backfilling and Grading:
Previously Mined Areas

Mississippi proposed to add new §5396 regarding backfilling and grading requirements on previously mined areas with preexisting highwalls. The regulation states that the requirements of §5391(a)(1) and (2) requiring elimination of highwalls will not apply to remining operations where the volume of all reasonably available spoil is insufficient to completely backfill the highwall. Instead, the highwall is to be backfilled to the maximum extent practical in accordance with a set of criteria articulated in the regulation. We find that Mississippi's new section is substantively the same as the counterpart Federal regulation at 30 CFR 816.106. Therefore, we approve Mississippi's new regulation.

L. Mississippi Surface Coal Mining Regulations Chapter 73. Alternative
Enforcement

Mississippi proposed to add a new chapter to its regulations regarding alternative enforcement that provides for criminal penalties and civil actions to compel compliance with provisions of the Act by adding §7301 Scope, §7303 General

Provisions, §7305 Criminal Penalties, and §7307 Civil Actions for Relief. We find that Mississippi's new Chapter 73 Alternative Enforcement is substantively the same as counterpart Federal regulations at 30 CFR Part 847. Therefore, we approve Mississippi's new Chapter 73.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendments, but did not receive any.

Federal Agency Comments

On August 1, 2012, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Mississippi program (Administrative Record No. MS-0423-01). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from the EPA for those provisions of the program amendments that relate to air or water quality

standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). None of the revisions that Mississippi proposed to make in these amendments pertained to air or water quality standards. Therefore, we did not ask EPA to concur on the amendments. However, on August 1, 2012, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendments from the EPA (Administrative Record No. MS-0423-01). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 1, 2012, we requested comments on Mississippi's amendments (Administrative Record No. MS-0423-01), but neither the SHPO nor ACHP responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendments Mississippi sent us on July 26, 2012, as revised June 28, 2013.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 924

that codify decisions concerning the Mississippi program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630 - Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866 - Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of

Executive Order 12988 and has determined that this rule meets the applicable standards of sections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10) decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132 - Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Mississippi program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Mississippi program has no effect on federally recognized Indian tribes.

Executive Order 13211 - Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

William L. Joseph, Acting Regional Director

Mid-Continent Region

July 3, 2013

Date

For the reasons set out in the preamble, 30 CFR Part 924 is amended as set forth below:

PART 924 - MISSISSIPPI

1. The authority citation for Part 924 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 924.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§924.15 Approval of Mississippi regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * July 26, 2012	* * <u>[Insert date of publication in the Federal Register]</u>	MSCMR Sections: 105; 1106; 2305; 2902; 3102; 3112; 3113; 3115(m), (n) and (o); 3127; 3128; 3129; 3130; 3131; 3133; 3135; 3136; 3137; 3138; 3139; 5396; 7301; 7303; 7305; and 7307

[FR Doc. 2013-25575 Filed 10/28/2013 at 8:45 am; Publication Date: 10/29/2013]